

**BDAC Assurances Work Group
Meeting Summary
March 11, 1997**

The BDAC Assurances Work Group held its sixth meeting on Tuesday, March 11, 1997 at the Resources Building, from 1 to 4 p.m.

BDAC Members of the Work Group present were:

Hap Dunning
Alex Hildebrand

Invited Participants in the Work Group present were:

Gerald Meral
Dennis O'Connor
Elizabeth Patterson, Friends of the Estuary

Others present (who signed in):

David Aladjem, North Delta Water Agency
Anthony Barkett, SEWD
Gary Bobker, The Bay Institute
Bill Dunn, Calaveras County Water District
Kyra Emanuels, Institute for Local Self Government
Anthony Farrington, Regional Council for Rural Counties
Amy Fowler, Santa Clara Valley Water District
Michael Gutterres, City of Stockton
Elizabeth Hawkins, ChemRisk/McLaren Hart
Penny Howard, USBR
Steve Johnson, The Nature Conservancy
William Johnston, Modesto ID
Dan Jones, MWD
Eugenia Laychak, CCPDR
Barbara Leidigh, State Water Resources Control Board
John Mills, Regional Council of Rural Counties
Jim Monroe, US Army Corps of Engineers, Regulatory Branch
Dennis O'Conner, CA Research Bureau
Bob Raab, Save San Francisco Bay Assn.
John Renning, USBR
Cliff Schulz, KCWA
Don Wagenet, Tetra Tech Inc.
Terry Young, Environmental Defense Fund

Introductions

Work Group Chair Hap Dunning opened the meeting. Work Group members and other participants introduced themselves.

Gerald Meral reported that there are a number of legislative proposals circulating related to the January flood events which may have some connection to the CALFED program.

Cliff Schulz reported that a group of stakeholders, primarily the CUWA member agencies and Central Valley agricultural interests, have started meeting with the goal of developing some internal agreement for recommendation to CALFED regarding a preferred alternative and other issues. The CUWA/Ag interests hope to extend their process to include environmental interests, as well as other water user interests in the upstream areas of the Sacramento and San Joaquin systems. In addition to a policy group, four technical teams have been formed, one of which will deal with assurance and finance issues.

In response to the concern expressed by Gary Bobker that the CUWA/Ag process not result in work products which rival or conflict with CALFED products, Cliff noted that all stakeholders will need to individually or collectively review and comment on various CALFED products, including the draft EIR/EIS, and that the purpose of the CUWA/Ag group is to see if there is common ground for comments and recommendations which can be fed back into the CALFED public process.

Lester Snow made the observation that it is useful from the CALFED perspective to have stakeholder comments presented in collective fashion where possible, citing the Regional Council of Rural Counties (RCRC) and the Northern California Water Association (NCWA) as examples. So long as all parties are cognizant of the need to protect the integrity of the public processes necessary to satisfy CEQA, NEPA, ESA, and the 404 permit process, the submittal of comments and recommendations by stakeholder groups should be beneficial to the development of the CALFED program.

Review of January 14 Meeting Summary

There were no additions or corrections to the January 14 meeting summary.

Overview and Summary of Assurance Process

Mary Scoonover reviewed the memorandum entitled "CALFED Bay Delta Program Implementation Strategy: Assurances" and the accompanying flow chart entitled "Implementation: Assessing Assurances for Case Study." The memorandum outlines the process

and schedule for the development of a preliminary package of assurances to accompany the Draft EIR/EIS for the CALFED Bay Delta Program. The chart is a visual display of the assurances development process, starting with the program elements and moving through identification of stakeholders issues and concerns, available tools, alternative implementation management structures, and resulting in a set of assurance alternatives which can be tested against guidelines or screening criteria.

Mary also briefly described the working paper, entitled "Assurance Alternatives for the Case Study", in the context of the process, explaining that it sets out four scenarios of management structures and tools as illustrations of possible assurance alternatives. This paper is a preliminary step towards the development of a draft report on the CALFED Implementation Strategy (assurances and financing) which will accompany the draft EIR/EIS. A final report will come out with the final EIR/EIS.

Regarding the management structure alternatives, Lester stated that participants should keep in mind that we cannot presume that the implementation strategy will include a new agency or entity. We must first identify what will need to be done, both in terms of implementing the program and providing assurances, and then figure which agency or combination of agencies, existing or new, are best equipped and most likely to succeed at the assigned tasks.

Dave Fullerton reminded the Work Group that at this point we have not fully described the case study, and therefore, the paper does not fully address all the identified stakeholder concerns. So far, the paper is limited to components dealing directly with the Delta.

Alex Hildebrand expressed concern about the concept of an environmental trustee, since this suggests that other interests, Delta agriculture for example, would not have the protection of a trustee. He suggested that trustee concepts be included which have a more balanced approach.

Amy Fowler noted that the flow chart does not specifically identify permitting problems and regulatory certainty as stakeholder issues.

It was acknowledged that the "shorthand" descriptions on the chart did not fully state all concerns, and it is recognized that these are significant stakeholder issues.

Bob Raab asked whether any private sector expertise had been used in developing the management alternatives. Mary Scoonover responded that CALFED hopes to get the benefit of such expertise through public review and comment.

Terry Young asked about linkages and phased implementation. Mary replied that the implementation strategy and the assurance package will recognize that the program will be implemented in phases or stages and that we will need a process to deal with those situations where, due to some unforeseen contingency, a program element cannot be implemented as planned. There will have to be some mechanism provided so that the failure of one element does not result in the failure of the entire program.

Discussion of the Working Paper

Two questions were presented to the Work Group for consideration:

Question No. 1. Does Section C., Management Structures, adequately describe the range of institutions available to implement some or all of a long-term solution? If not, what changes do you suggest in order to complete the array of management structure options?

Question No. 2. After reviewing the advantages and disadvantages of the four assurance scenarios presented in Section E., what improvements do you suggest?

To provide context for consideration of these questions, Dave Fullerton summarized the tools section of the paper. He explained that this section contains a description of each tool, some examples of how the tool might work as part of the CALFED assurance package, and some of the advantages and disadvantages of each tool.

There was some discussion of whether legislation can really provide a durable form of assurance. Legislation can always be repealed or amended by a future legislative body. There was some discussion of specific examples of successful legislation for major resource management programs, such as the Burns Porter Act and the Coastal Zone Management Act. Mary stated that CALFED staff are also looking at situations such as the Everglades, Chesapeake Bay and the Great Lakes, for successful legislative programs.

Bob Raab observed that this discussion raises a fundamental issue -how to protect ecosystem restoration from future changes in the political climate. Is the most "bullet proof" tool a senior water right status for instream flows? Mary noted that the ecosystem program goes beyond instream flows, and that no one tool will be adequate; hence, the effort to develop a package or "suite" of assurance tools.

Alex Hildebrand commented that legislation which requires subsequent annual appropriations may be a weak tool; also that certain interests will need less assurance protection in the long run than others. Urban interests, for example, because of their voting strength, may need less protection than agricultural or environmental interests.

Dave Fullerton continued through the tools section. There was a brief discussion regarding the utility of contracts and the level of assurance provided by contractual arrangements. There was also some discussion about joint powers agreements.

Regarding finance mechanisms as a tool, Cliff Schulz said the basic problem will be how to assure the continued flow of federal funds for the support of the program. Liz Patterson asked to see more examples of how financial and economic incentives could be used as assurance tools.

Hap made the observation that it may be that the tool is less important than the context in which the tool is applied. Ultimately, any tool is only as good as the political cohesion of the supporters of the program.

Concluding discussion on the tools list, it was suggested that water rights and/or the public trust doctrine be added. Another suggestion was to include conservation easements, deed restrictions and the power of eminent domain.

Dave then outlined the approach to management alternatives (Section C of the working paper). While there is a continuum of management structures which can be considered as part of the implementation plan for the long term Bay Delta program, they can be generally categorized as (1) no new agencies; (2) reorganization of existing agencies through JPA's; and (3) new agencies or entities.

A number of comments, suggestions and additional questions were raised by the participants in the discussion of Question No. 1 above:

Bob Raab questioned whether the privatization model offers anything useful in consideration of management alternatives.

Regarding Alternative 3.A, Cliff Schulz suggested the use of a term other than "trustee", because of the legal implications associated with this word. Perhaps we should use the word "conservancy" or at this point, simply call it an "entity".

The use of a federally chartered corporation was suggested as a variation on the "new agency" approach.

Regarding Alternative 3.C, it was suggested that the alternatives could make a further distinction between new management and new operations staffing.

Dave pointed out that there are other variations possible, such as consolidation of CVP and SWP operations with the operation of any new facilities, in a reorganized or new entity.

A participant offered that we should not assume that any new facilities will necessarily be constructed and/or operated by DWR and/or the Bureau of Reclamation. It may be possible that local interests will be involved in some way as well.

John Mills cautioned against creating a new agency which was too well insulated from political constraints. He pointed out that some observers believe that the original intent behind formation of the Water Commission was to oversee DWR, but this has not happened. This remark triggered a brief discussion about the difficulty of balancing the need for the entity which implements the CALFED ecosystem program or which operates new facilities to have the necessary independence and authority and yet be accountable to someone.

Mary Scoonover then briefly reviewed the Guidelines section of the paper. Dave suggested that at some point the Guidelines may be converted into screening criteria.

Discussion then turned to the four assurance scenarios described in Section E of the working paper and Question No. 2 above.

In the discussion of Scenario No. 1 (Existing Agencies, Informal Coordination), it was noted that the Work Group will have to "spend some time on this one" and that in effect, the burden of proof will be to show that the existing agencies cannot, for some reason, adequately implement (and assure the implementation of) the various components of the long term program.

Other comments on Scenario No. 1:

A weakness of this approach is the lack of stakeholder involvement. The Ops Group may provide a model for stakeholder involvement at an advisory level. There should also be some mechanism for stakeholder oversight of funding and budgets.

It was noted again that the Work Group will need more detailed explanation of what will need to be done in terms of implementation and providing assurances, before rational decisions can be made about the management of the program.

An existing agencies implementation scenario should allow for input of independent scientific advice.

Even if the CALFED program is implemented by existing agencies, there will be a need for some more centralized funding and budgeting process.

A disadvantage of the existing agency approach is that it builds in the limitations of the existing agencies.

In the discussion of Scenario No. 2 (Ecosystem Restoration JPA), it was noted that a JPA solves the funding and budgeting problem discussed above. The JPA is a separate legal entity which can receive appropriations and spend money. Also, a JPA's powers can be as narrow or as broad as the enabling legislation dictates, so the JPA is probably not subject to the same limitations as its member agencies.

Finally, there was a brief discussion of the new agencies approaches outlined in Scenarios 3 and 4. One particular problem with any new agency will be how the new agency is governed and managed. Would its governance be provided by political appointments? What interests would be represented by the governing body of a new agency?

One Work Group participant asked for a more detailed explanation of the disadvantages of the new agency approach, particularly the comment that under the environmental trustee scenario, the environment will bear the risk of failure of the ecosystem program. This will be spelled out in more detail in the next draft.

Next Steps

Staff will do another version of the working paper, based on a completed case study and incorporating the comments and suggestions made at this meeting. The paper will further refine and expand on the management structure and assurance alternatives.

The next meeting of the Work Group will be on April 24.

The public workshop on assurances will be on May 15.